IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2006

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.6615 of 2006

D.Neelagandan .. Petitioner

vs.

1. The Joint Registrar of
Co-operative Societies,
Villupuram,
Villupuram District.

2. The Special Officer,
II-93, Chinnasalem Primary
Agricultural Co-operative Bank,
Kallakurichi Taluk,
Villupuram District. .. Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.Na.Ka.12837/2002 Sa.Pa. dated 21.1.2006 and the impugned order passed by the second respondent in his proceedings, dated 21.9.2002 and to quash the same and consequently direct the respondents to re-instate the petitioner in service with all monetary and attendant benefits.

For petitioner : Mr.K.Raja

For respondents : Mr.D.Srinivasan
Government Advocate for R1
Mr.R.Chandrasekaran for R2

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O R D E R

This writ petition has been filed for the issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.Na.Ka.12837/2002 Sa.Pa., dated 21.1.2006, and the impugned order passed by the second respondent in his proceedings, dated 21.9.2002 and to quash the same and consequently direct the respondents to re-instate the petitioner in service with all monetary and attendant benefits.

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2. Heard the learned counsel for the petitioner as well as the respondents.

3. The brief facts of the case, as stated by the petitioner, are as follows:

The petitioner was employed as a Secretary of the II-93, Chinnasalem Primary Agricultural Cooperative Bank, Kallakurichi Taluk, Villupuram District. While so, he was placed under suspension by the Special Officer of the second respondent-Bank, on 23.7.2001. A charge memo had been issued to him for which the petitioner had submitted his explanation. Later, an order of dismissal from service was passed by the second respondent in his proceedings, dated 21.9.2002. It has been stated by the petitioner that as the Secretary of the second respondent-Bank, the petitioner is a cadre employee governed under G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.3.2000. As such, the Competent Authority for conducting disciplinary proceedings and for passing consequent orders is only the Joint Registrar of Co-operative Societies, who is the first respondent in the present writ petition. Therefore, the impugned order of removal from service passed by the second respondent, namely, the Special Officer of the Chinnasalem Primary Agricultural Co-operative Bank, dated 21.9.2002, is bad in law. The petitioner had preferred a review petition under Section 153 of the Co-operative Societies Act, 1983, to the first respondent, on 26.12.2002 and the first respondent had passed an order, dated 21.1.2006, rejecting the claims of the petitioner. Therefore, the present writ petition.

4. Learned counsel appearing for the petitioner states that the "Cadre Authority" as defined under Regulation 2 clause (vi) of the Tamil Nadu Primary Agricultural Cooperative Banks Common Cadre Service Regulations, 2000 (hereinafter referred to as the Regulations) means the Competent Authority as provided in Section 75 of the Tamil Nadu Cooperative Societies Act, 1983, (hereinafter referred to as the Act). In clause (vii) of Regulation 2, the "cadre employee" is defined as the Secretary of the Primary Agricultural Cooperative Bank, to whom the Tamil Nadu Primary Agricultural Cooperative Bank Common Cadre Service Regulations, 2000, shall apply.

5. It is not in dispute that the Government Order in G.O.Ms.No.55 Cooperation, Food and Consumer Protection Department, dated 24.3.2000, had come into force, on 24.3.2000 and according to the above mentioned Regulations, the "Cadre Authority" would be the committee as provided in Section 75 of the Act. Further, pending constitution of the Committee, the Joint Registrar of Cooperative Societies in the Region concerned shall be the “Cadre Authority” in respect of Primary Agricultural Cooperative Banks for a period of three years from the date of coming into force of the Regulations.

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6. Looking at the present issue from that angle, it is clear that the disciplinary action taken against the petitioner ending in his dismissal from service could have been initiated and concluded only by the Joint Register of the Co-operative Societies, the first respondent herein. In clause (v) of the Regulation 28 dealing with the penalties, it is provided that no cadre employee shall be imposed with the above penalties by an Authority other than the Cadre Authority. Provided that the Board of the Primary Agricultural Cooperative Bank under which a cadre employee is for the time being employed shall have the power to impose on such employee the penalty of censure or stoppage of increment upto two years without cumulative effect. However, in the present case, it is found that the petitioner had been imposed with the punishment of dismissal from service which only the Joint Registrar of Co-operative Societies concerned could have done.

7. Regulation 29 deals with disciplinary proceedings. In clause (a)(i) of Regulation 29, it is provided that the cadre employee shall be served with a charge sheet duly approved by the Cadre Authority containing specific charges and mention of grounds in support of each charge. In clause (c) of Regulation 29, it is stated that the Enquiry Officer shall be appointed by the Cadre Authority provided that the officer at whose instance the disciplinary action was initiated shall not be appointed as an Enquiry Officer nor shall the Enquiry Officer be the Appellate Authority.

8. In clause (e) of Regulation 29, it is provided that a cadre employee may be placed under suspension by the Cadre Authority and the order of suspension may be revoked by the Cadre Authority. The Registrar of Cooperative Societies may direct the Cadre Authority to place any cadre employee under suspension and if the Cadre Authority fails to do so, the Registrar of Cooperative Societies himself may order such suspension.

9. From the above provisions, it is clear that the cadre employee, like the petitioner, can be suspended or removed from service only by the Cadre Authority as provided under Regulations formulated under G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.3.2000.

10. It has been stated by the learned counsel appearing for the respondents that the petitioner was working as the Secretary in the second respondent-Bank. During his tenure as the Secretary of the said Bank, he had indulged in various irregularities and therefore, he was placed under suspension, with effect from 23.7.2001. Thereafter, charges were leveled against him and a charge memo had been served on him. After conducting an enquiry, he was dismissed from service, on 21.9.2002.

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11. It has been further stated by the learned counsels appearing for the respondents that at the time when the disciplinary proceedings were initiated against the petitioner there was no committee set up in Villupuram District as contemplated under Section 75 of the Act. Therefore, the Special Officer, the second respondent herein, had passed the order of dismissal against the petitioner, which was later challenged by the petitioner by way of a review petition before the first respondent which was dismissed on merits. Therefore, the main contention of the learned counsel appearing for the second respondent is that principles of natural justice were strictly followed in giving a reasonable opportunity to the petitioner to defend himself during the enquiry and the petitioner was dismissed from service thereafter. There was no violation of the Regulations applicable to the petitioner as formulated under G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.3.2000.

12. At the stage of the hearing of the writ petition, it has been pointed out by the learned counsel appearing for the petitioner that the grounds regarding the order of dismissal being passed by the second respondent without having jurisdiction, in view of G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.3.2000 and the Regulations framed thereunder, though not raised earlier, since they go to the root of the matter and being questions of law, they could be raised even at this stage.

13. On a perusal of the records placed before this Court, it is found that even though the Tamil Nadu Primary Agricultural Cooperative Bank Common Cadre Service Regulations, 2000, had come into force, on 24.3.2000, whereby, only the Cadre Authority could initiate and conclude the disciplinary proceedings against the cadre employee, it was only the Special Officer, the second respondent herein, who had initiated the disciplinary proceedings by way of suspending the petitioner and thereafter, had passed the order removing the petitioner from service.

14. In such circumstances, the order passed by the first respondent in Review Petition No.12837/2002 Sa.Pa., dated 21.1.2006, is set aside leaving it open to the petitioner to file a fresh revision petition before the first respondent, under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983, to challenge the proceedings of the second respondent, dated 21.9.2002, raising all the necessary grounds, including those that are relating to G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.3.2000, and the Regulations framed thereunder, within a period of four weeks from the date of receipt of a copy of this order and on such petition being filed, the first respondent is directed to hear and decide the matter on merits and in accordance with law, and pass appropriate orders, within a period of eight weeks thereafter.

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15. With the above directions, the writ petition stands partly allowed to the extent mentioned above. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Joint Registrar of
Co-operative Societies,
Villupuram,
Villupuram District.

2. The Special Officer,
II-93, Chinnasalem Primary
Agricultural Co-operaive Bank,
Kallakurich Taluk,
Villupuram District.

1 CC TO MR.K. RAJA, ADVOCATE SR 45602

1 CC TO MR.R. CHANDRASEKARAN, ADVOCATE SR 46283

1 CC TO GP, SR 45848

W.P.No.6615 of 2006

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BP/17.11 27.09.2006

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